

Client Service Agreement
Between
VITALITY SELECT, INC.TM
and
WASHINGTON COUNTY

This CLIENT SERVICE AGREEMENT (this “Agreement”) is entered into and made by and between VITALITY SELECT, INC.TM, a Delaware corporation headquartered at 1482 East 920 South, Provo, Utah 84606 (“VSI”), and WASHINGTON COUNTY, a government entity located at 197 E. Tabernacle, St. George, Utah 84770 (“CLIENT”) effective as of the 1ST day of May, 2009 (the “Effective Date”).

WHEREAS, VSI provides Targeted Health Support (“THS”) and other health management services and products; and

WHEREAS, CLIENT wishes to contract with VSI to perform and provide certain services and products for CLIENT and VSI is willing to provide such services and products to CLIENT as described herein;

NOW THEREFORE, in consideration of the representations, warranties and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Services. VSI agrees to provide THS services and products more particularly described in Appendix 1 attached hereto and incorporated herein. VSI, in its sole and absolute discretion, may upgrade or otherwise modify its products and services without prior notice to CLIENT. VSI agrees to notify CLIENT of any such upgrade or modification to such products and services. VSI will provide its THS services through licensed, independent healthcare practitioners who will provide THS clinical services described herein to CLIENT.

2. Information. CLIENT acknowledges that a key element in the ability of VSI to deliver high quality services and products to CLIENT’s eligible members is CLIENT’s continuing cooperation with VSI. In this regard, CLIENT agrees to designate one individual (a “Project Manager”) who shall be charged with the responsibility of coordinating the services of VSI on a day-to-day basis and CLIENT’s responsibilities herein designated.

(a) **Member Eligibility Information.** Upon execution of this Agreement or as soon as reasonably practicable thereafter, CLIENT agrees to make available to VSI a computer database (the “Eligibility File”) including each of CLIENT’s eligible members and their unique health plan identification number in accordance with the specifications set forth in Appendix 2 attached hereto and incorporated herein.

3. Delivery. VSI shall send health promotional and educational materials electronically via the Internet for CLIENT to distribute to its health plan members, and may also occasionally send such materials via US mail. CLIENT is authorized to reproduce any such materials it receives from VSI.

4. **Term.** The initial term of this Agreement shall be for one year from the Effective Date unless terminated earlier as provided in Paragraph 6, below. Thereafter, this Agreement shall automatically renew on a year-to-year basis unless terminated by either party by providing written notice to the other party not less than sixty (60) days prior to the end of the then current term.

5. **Compensation.**

(a) **Payment.** CLIENT shall pay VSI its THS Setup Fee and then-current monthly Capitation Fees as set forth in Appendix 3 and shall pay VSI's Providers their then-current prices for THS products and services delivered to eligible members as more particularly described in Appendix 1. Appendix 3 capitation prices shall remain fixed for at least one year. Providers' THS service and product prices shall remain fixed for at least one year.

(b) **Late Payments.** Late charges shall accrue on any amounts delinquent more than ten (10) days at the rate of one and one-half percent (1.5%) per month, or the maximum rate of interest permitted by law, whichever is less, and shall be payable upon demand by VSI.

6. **Termination.**

(a) **Breach.** Subject to subparagraph (b) below, either party may terminate this Agreement upon sixty (60) days prior notice in the event the other party materially breaches any term or provision of this Agreement, provided that the non-breaching party shall provide the breaching party notice of such breach and provide the breaching party thirty (30) days to cure such breach.

(b) **Nonpayment.** Notwithstanding subparagraph (a) above, VSI may terminate this Agreement upon ten (10) days written demand for any delinquent amount due hereunder if same is not paid by CLIENT within the 10-day period.

7. **Post-Termination Obligations.** Upon termination of this Agreement, CLIENT agrees to:

(a) pay VSI all sums owing for services rendered prior to the effective date of termination notwithstanding any claims or defenses asserted by CLIENT;

(b) promptly return all proprietary and Confidential Information to VSI;

(c) comply with the obligations of Paragraph 8 below for a period of two (2) years after the termination of this Agreement, provided that nothing on this Agreement shall limit the time periods applicable to trade secrets as defined and as protected under applicable law.

8. **Confidential Information.**

(a) **Definition.** "Confidential Information" shall for purposes of this Agreement include, without limitation, all information in any form which relates to the business, expertise and/or operations of the other party and/or its respective Affiliates, including, without limitation, information in any form generally understood to be proprietary or confidential and/or that is related to products and services,

commercial and financial information, system functionality charts and descriptions, program code logic, and information about health care providers, customers and/or business partners.

(b) **Restrictions on Use and Disclosure.** Neither party to this Agreement nor any Affiliate of such party shall use such Confidential Information of the other party to this Agreement except in furtherance of the purposes set forth in this Agreement. Neither CLIENT nor any Affiliate of CLIENT shall have rights of ownership or otherwise in any Confidential Information disclosed by VSI hereunder and all such rights are expressly reserved to VSI and/or the rightful owner thereof. The term “Affiliate” for purposes of this Agreement shall mean (i) nonprofit, or for-profit corporations of which a party owns or controls fifty percent (50%) or more of the membership or shares of voting stock and as to which such Party has the right to elect a majority of the members of the corporation’s board of directors or trustees; and (ii) nonprofit, or for-profit corporations and other entities, including, without limitation, partnerships, business trusts, limited liability companies controlled by, controlling or under common control with a party, including, without limitation, by means of a management agreement. Each party will otherwise protect the confidentiality of the other party’s Confidential Information in at least the same manner it protects the confidentiality of its own proprietary and Confidential Information of like kind. The restrictions upon disclosure, use, and reproduction of Confidential Information do not apply to information that (a) was in the other party’s possession prior to receiving it from CLIENT and not subject to any restrictions regarding use or disclosure; (b) is or later becomes generally available to the public through no fault of the other party; (c) the receiving party develops internally without reference to information received pursuant to this Agreement; or (d) the other party receives from a third party without restriction against disclosure, use, or reproduction.

9. Confidentiality of Individually Identifiable Health Information.

(a) **Definition.** For purposes of this Agreement “Individually Identifiable Health Information” has the same meaning as set forth in 42 U.S.C. §1320d, which is any information, including demographic information, collected from an individual that has been received or created by CLIENT and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual and identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

(b) **Restrictions on Use and Disclosure.** VSI hereby warrants to CLIENT that VSI will appropriately safeguard information made available to or obtained by VSI. Furthermore, VSI shall not use such Individually Identifiable Health Information except in furtherance of the purposes set forth in this Agreement, unless otherwise agreed. In implementation of such assurance and without limiting the obligations of VSI otherwise set forth in this Agreement or imposed by applicable law, VSI hereby agrees to comply with applicable requirements of state and federal law relating to Individually Identifiable Health Information and with respect to any task or other activity VSI performs on behalf of CLIENT, to the extent CLIENT would be required to comply with such requirements. In amplification and not in limitation of the provisions of this Agreement including this Paragraph of this Agreement, VSI agrees that it will:

(i) Not use or further disclose such information other than as permitted or required by this Agreement;

(ii) Not use or further disclose the information in a manner that would violate the requirements of applicable law, if done by CLIENT;

(iii) Use appropriate safeguards to prevent use or disclosure of such information other than as provided for by this Agreement;

(iv) Report to CLIENT any use or disclosure of such information not provided for by this Agreement of which VSI becomes aware;

(v) Ensure that any subcontractors or agents to whom VSI provides Individually Identifiable Health Information received from CLIENT agree to the same restrictions and conditions that apply to VSI with respect to such information;

(vi) Make available Individually Identifiable Health Information in accordance with applicable law; and

(vii) Make their internal practices, books, and records relating to the use and disclosure of Individually Identifiable Health Information received from CLIENT available to the Secretary of the United States Health & Human Services and state regulatory authorities for purposes of determining CLIENT's compliance with applicable law (in all events, VSI shall immediately notify CLIENT upon receipt of any such request, and shall provide CLIENT with copies of any such materials).

10. Non-solicitation. CLIENT represents and covenants that during the term of this agreement and for a period of one (1) year thereafter, CLIENT shall not without the express written consent of VSI (which consent may be withheld for any reason), directly or indirectly solicit, take away, hire, employ or endeavor to employ any employee or independent Provider of VSI, whether as an employee, independent contractor or consultant, without permission of VSI. In the event that permission is granted, CLIENT shall pay VSI liquidated damages, in an amount equal to the annual cost associated with the employment of that individual, including benefits; or the annual net revenue derived by VSI from its agreement with that Provider.

11. Services Not Provided. CLIENT shall remain responsible for all insurance and licensed insurance broker services including but not limited to third party claim administration trust billing, benefit administration, re-insurance services, and the like.

12. Indemnification. Each party shall indemnify, defend and hold the other party from and against any and all claims, liabilities, losses, expenses, fines and penalties including, but not limited to, reasonable attorneys' fees and costs actually incurred, arising by reason of a breach of this Agreement or the acts or omissions of the other party, its agents or employees, whether presently known or unknown, determined or determinable, due or not yet due, which arise or relate to obligations under this Agreement.

13. General Provisions.

(a) **Acceptance by VSI; Entire Agreement.** This Agreement shall not be effective until accepted in writing by an authorized representative of VSI. This Agreement, together with Appendices, constitutes the entire agreement and understanding between VSI and CLIENT concerning the subject matter hereof, and supersedes all prior written and oral understandings, agreements, proposals, promises and representations of the parties regarding all subject matter contained herein. No representation or promise hereafter made by a party.

(b) **Amendments.** This Agreement may not be modified or amended except by an instrument in writing signed by duly authorized representatives of the parties hereto.

(c) **Severability.** In the event that any provision hereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.

(d) **Assignment; Change in Ownership.** This agreement shall not be assignable by CLIENT and CLIENT may not delegate any of its duties hereunder to another entity not under control or controlled by CLIENT without the express written consent of VSI. VSI reserves the right to subcontract with any third party for the services and products described herein and CLIENT hereby consents and agrees to such arrangements, and to assign this Agreement.

(e) **Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Utah without reference to conflicts of laws principles.

(f) **Non-Waiver.** The failure of VSI to exercise any right or option under this Agreement shall not constitute a waiver of its rights. A waiver by either party or the breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach thereof.

(g) **Force Majeure.** VSI shall not be responsible for any delay or other failure to perform due to unforeseen circumstances or to causes beyond its reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, or inability to obtain necessary utilities, labor, equipment or materials through usual and regular resources at usual and regular prices.

(h) **Cost of Collection.** Each party agrees to pay and/or reimburse the other party for all costs of enforcing the terms of the Agreement including attorneys' fees and expenses.

(i) **Notices.** All notices or other communications hereunder shall not be binding on either party hereto unless in writing and delivered to the other party hereto at the address set forth below. Notices shall be deemed duly delivered upon hand delivery, receipt of facsimile transmission thereof, or receipt of express or overnight delivery thereof at the addresses specified below or three (3) days after deposit thereof in the United States mail, postage prepaid, certified or registered mail. Any party may change its address for notice by delivery of written notice thereof in the manner provided above.

To: VSI: Vitality Select, Inc.

1482 East 920 South
Provo, Utah 84606

To: Client: Washington County
197 E. Tabernacle
St. George, Utah 84770

(k) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and all such counterparts together shall constitute but one and the same instrument.

The duly authorized agents of each party hereto have executed this Agreement as of the Effective Date first written above.

For VITALITY SELECT, INC.TM:

For CLIENT:

By: _____
Reginald Hughes

By: _____

Title: President & CEO

Title: _____

APPENDIX 1

Targeted Health Support Services

VSI shall provide CLIENT with the following services and products:

- A. Access to its THS-trained and equipped healthcare service providers, who operate as independent contractors of VSI. VSI shall monitor each provider's ongoing performance for quality assurance purposes. Each Provider shall provide CLIENT'S qualified members with THS assessments, dietary supplements and homeopathic products, with the assistance of a VSI-developed software protocol.
- B. Implementation Support, including an Initial Implementation Meeting, the development of communication plans with CLIENT'S appointed Project Manager.
- C. A VSI Client Service Representative for ongoing communication and support.
- D. Initial and ongoing THS promotional materials, including posters, brochures, emails, website content and newsletter articles.
- E. Assist CLIENT to determine HIPPA-compliant methods of identifying plan members who could benefit from THS services and support CLIENT in its efforts to motivate such members to use THS services. Also help CLIENT find ways to encourage the "alleged well" to have an initial THS assessment in order to help them identify ways to sustain their good health through THS health support products and services.
- F. At CLIENT's request, suggest incentives designed to encourage health plan members to utilize THS services.

APPENDIX 2

Member Eligibility Information

CLIENT will establish an information system to keep VSI Providers informed of the names and any health plan member identification numbers of persons eligible to receive THS services under CLIENT's health plan. This may be done through an electronic system, an insurance identification card or other method. The information may be made available directly to each VSI Provider or may be routed through VSI for distribution to the Providers who are serving CLIENT's members.

Each VSI Provider will be responsible to determine health plan members' eligibility based on information from CLIENT. In the event Provider discovers that a plan member was not eligible for THS services delivered, Provider will be responsible to collect the full amount due directly from the recipient of the service.

APPENDIX 3

Fee Schedule and Payment Terms

VITALITY SELECT, INC. THS FEES:

THS Program Setup Fee: NO CHARGE

THS Capitation Fee: \$1.30 per Health Plan-Enrolled Employee Per Month (dependents participate at no additional fee), or \$250 per month, whichever is greater.

VITALITY SELECT PROVIDER FEES:

VSI Providers are independent practitioners, and therefore, have the right to set their own THS fees. However, VSI suggests a fee schedule to its Providers. Typical Provider fees are as follows:

Cost for First Assessment: \$140

Cost per Follow-on Assessment: \$90

Cost for homeopathic products and dietary supplements: \$60 to \$80 per visit

Homeopathic and dietary supplement product refills: Typically \$40 to \$80 per refill

PAYMENT TERMS:

THS Setup Fee: NO SETUP FEE

THS Capitation Fees: Due on first day of the month in which services are to be provided, and due the first day of each month thereafter. For example, the capitation fees for the month of May would be due on May 1.

Provider Fees: Health Plan Members are to make their co-payments to the Provider at the time of service. The Provider will bill the unpaid balance to CLIENT at the time of service. Reasonable terms for payment of such balances to Provider by CLIENT shall be determined between the Provider and CLIENT.